IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1580 of 1999

in

SPECIAL CIVIL APPLICATIONNo 5667 of 1999

WITH

CIVIL APPLICATION NO. 13214 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARDAR PATEL UNIVERSITY

Versus

MINAL R JOGI

Appearance:

MR MITUL K SHELAT for Appellant

MR RAMNANDAN SINGH for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE B.C.PATEL

Date of decision: 02/05/2000

C.A.V. JUDGEMENT (Per Patel, J.)

Sardar Patel University, original respondent No. 1 in Special Civil Application No. 5667 of 1999, being aggrieved by the judgment and order passed by the learned Single Judge on 22nd October 1999 in SCA No. 5667/99, has preferred this Letters Patent Appeal.

2. Relevant facts, necessary to decide this Letters Patent Appeal, are as under:

2.1 Minal R Jogi, original petitioner/respondent No.1 herein, (hereinafter referred to as the petitioner), was a student of B.J. Vanijya Maha Vidyalaya where she was prosecuting her course of Bachelor of Business Administration. She appeared in the final year examination which commenced on 26th March 1999. On 5.4.1999, the petitioner appeared in the paper of Business Environment (new course). Supervisor, who was present in the Examination Hall, where the petitioner was allotted her seat for appearing at the examination found the petitioner, at about 5.50 pm., with a ruler with some writings / inscriptions thereon. The writings on the ruler pertained to the question of Impact of subsidies on fiscal management of economics and its relevance from the view point of global effectiveness. The petitioner was called upon to explain for the alleged misconduct by her while answering the question paper at the final degree course of BBA. The petitioner submitted that she was mentally upset as her father suffered on account of heart attack just a day before the examination, and on the date of the examination, as contended by the petitioner, after completing her paper, she wrote certain words on the scale unknowingly and absent-mindedly. The respondent stated that as some spare time was there, this was written because of her condition stated hereinabove. She further stated that she has not copied and the matter was not related to the answers already submitted and the same was written after completion of the paper. The fact-finding authority considered the material on record and arrived at a conclusion that the petitioner indulged in misconduct and the petitioner being held guilty, the appropriate authority cancelled her result and debarred her from appearing at any of the examinations conducted by the University till October 1999. It was made clear that the petitioner will be allowed to appear at the examination which may be conducted by the University in

March-April-May 2000.

Before proceeding further, it would be proper to note here that the petitioner appeared at the examination conducted by the University and the result is likely to be declared within a reasonable period.

Learned Single Judge decided the Special Civil Application as if the Court was sitting in appeal over the decision rendered by the appropriate body empowered to inflict punishment on the petitioner who was possessing incriminating material in the Examination Hall. Attention of the learned Single Judge was drawn to the reported decision of the Apex Court in the case of Central Board of Secondary Education Vs. Vineeta Mahajan and Others reported in 1994 (1) GLH 71 wherein it is held that even possession of material pertaining to the subject in the examination hall would amount to misconduct. However, learned Single Judge held that in the instant case the petitioner has written down something on the ruler after she completed the work of answering her questions in the subject. Thus, learned Single Judge accepted the defence and allowed the petition.

In criminal trials, in certain types of cases, burden is on the prosecution to prove beyond reasonable doubt that the accused is guilty while in certain types of cases, the burden shifts on the accused on production of material in the form of evidence. The burden shifts on the accused if the prosecution discharges its limited obligation. So far as the departmental inquiries are concerned, there is no question of strict burden of proof and the matter is to be decided on the yard stick of preponderance of probability. So far as the misconduct committed at the examination is concerned, sometimes the burden would be not even to the extent of yard stick of preponderance of probability but less than that. Mere finding of incriminating material is sufficient to hold the examinee guilty of misconduct. Whether incriminating material was intended for copying or was actually used or was innocently possessed may be relevant for imposing punishment. The body conducting the examination has to point out the misconduct. It is irrelevant whether the student has used the material for the purpose of answering the question or not. It is not necessary that the material which was found from the student must have been utilised for the purpose of answering the question. To hold the student guilty of misconduct it is sufficient if the material is found from the student pertaining to the subjects. In the instant case, it is admitted

position that the writing on the ruler pertain to the question of Impact of subsidies on fiscal management of economics and its relevance from the view point of global effectiveness. The student appeared at the examination in the subject of Business Environment. It is also admitted that the respondent did not answer the said question, but answered the alternative question pertaining to privatisation. Thus, the material which was found from the possession of the student on the ruler was pertaining to the subject for which the the student was appearing at the examination. If the student had answered some easier question given in the alternative, it does not mean that this is not the case of misconduct.

Learned Single Judge appears to have been much impressed with the fact that the petitioner was sitting on a Bench in the front row of the examination hall. Learned Single Judge considered that the petitioner's father had a heart-attack on the previous day and therefore, the petitioner did not realise the seriousness of the Act of writing on the ruler. Learned Single Judge accepted the defence and held that the respondent did not realise the seriousness of writing on the ruler after she had completed answering all the questions in the subject. This approach is not permissible. The fact-finding authority found that the petitioner had some material written on the scale pertaining to the subject matter, and that itself is sufficient. It is relevant to note that the immediate version of the petitioner at the time when she was found with the ruler having material inscribed on it with regard to the subject matter was that it was her first mistake. In her own words, the explanation given was :

> "I was caught by the Senior Supervisor with a foot ruler. I have not written anything. This was first mistake and I will never do it. Please consider my first mistake".

Thus, the immediate version is quite different than what has been placed in writing before the University on 29.6.1999. On 29.6.99, the respondent came out with a version that the respondent had written some words on the ruler unknowingly and absentmindedly and that too as there was spare time left. Thus, the explanation is an after-thought, and in our opinion, interference was not called for in a matter like this.

In the case of Gujarat Secondary Education Board vs. Sunny Dharampalsingh Chaudhary - L.P.A. No. 6/2000 and others decided by this Court (Coram: D.M.

Dharmadhikari, C.J. & C.K. Thakkar, J.), the Gujarat Secondary Education Board conducted the examination for Standard X. The Board cancelled the result of some students and hence writ petitions were filed. Learned Single Judge (Coram: M.R. Calla, J.) by judgments dated 21.7.1999 and 23.7.1999 granted relief directing declaration of result of 10th standard examination of all the petitioners. Learned Single Judge further held that the admission of the students made in the examination hall under fear and pressure cannot constitute evidence for taking action against them. Learned Single Judge also held that there was breach of principles of natural justice and the students did not get fair opportunity to show cause against the proposed action. The matter was carried in appeal and the Division Bench of this Court (K.G. Balakrishnan, C.J. and M.S. Parikh, J.) issued direction to the examination committee of the Board to hold a fresh inquiry into the alleged use of unfair means by the students. After holding a fresh inquiry, the examination committee declined to interfere with the finding that the students were guilty of adopting unfair means in the examination and cancelled their results against which writ petitions were filed which were allowed by the learned Single Judge (Coram: M.S. Shah, J.). Learned Single Judge held that the evidence on record does not prove adoption of any unfair means of copying from book by the students in the examination hall. Again Letters Patent Appeals were preferred against the said order. In the first round of litigation, learned Single Judge (Coram: M.R. Calla, J.) held that "the evidence is not of probative value to hold that there is evidence of adoption of unfair means against the students". In the second round of litigation, the learned Single Judge (Coram: M.S. Shah, J.) made an attempt to reappreciate the evidence on record to come to a conclusion that even applying "the yardstick of preponderance of probabilities" applicable to domestic enquiries, the charge against the students was not established. In the LPAs arising from the second round, the Division Bench framed two questions as under in paragraph 13 of the judgment:

"Two main questions arise for decision before us.

> The first is, whether the learned Single Judges of this Court, in going into the question of the so called probative value of the evidence, exceeded their power of judicial review. The second is, whether the students, on the basis of evidence on record, including that of their admission recorded in the examination hall, could be punished for adopting unfair means."

The Apex Court in the case of CENTRAL BOARD OF SECONDARY EDUCATION vs. VINEETA MAHAJAN AND ANOTHER reported in 1994 (1) GLH 71 SC considered Rule 6 of the rules regulating the examination and held as under:

> "The rule clearly defines "the use of unfair means at examination" and lays down in simple language a candidate having in possession paper, relevant to the examination. The sine qua non, for the misconduct under the Rule, is the recovery of the incriminating material from the possession of the candidate. The Rule does not make any distinction between bona fide or mala fide possession of the incriminating material. The High Court reasoning, that the candidate having not used the material - in spite of the opportunity available to her - the possession alone would not attract the provisions of the Rule, in our view, is not borne out from the plain language of the Rule. May be, because of strict vigilance in the examination hall the candidate was not in a position to take out the papers from the pencil box and use the same. The very fact that she took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means by her in the examination under the Rule ... "

The Apex Court, in the case of MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION vs. K.S. GANDHI AND OTHERS reported in (1991) 2 SCC 716 had an occasion to consider the case of students. Inquiry held by the Committee wherein full opportunity has been afforded to the students and the students participated in the inquiry. Domestic inquiry held in the campus or premises of the Board by educational authority cannot be compared with the proceedings in a criminal trial. The Apex Court pointed out as under:

> "There is no scope for importing the principles of criminal trial while considering the probative value of the probabilities and circumstantial evidence. The Examination Committee is not bound by technical rules of evidence and procedure as are applicable to courts ... "

> " .. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of

> probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straitjacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic inquiries."

Considering the principles enunciated in the two aforesaid judgments as also the judgment of the Apex Court in the case of BOARD OF HIGH SCHOOL VS. GHANSHYAM reported in AIR 1962 SC 1110 and the decision of this Court in the case of SIDDHARTH MOHANLAL SHARMA VS. SOUTH GUJARAT UNIVERSITY reported in 1982 (1) GLR 233 and the decision dated 14.2.2000 of the Division Bench of this Court in L.P.A. No. 6 of 2000 and others which are considered in the aforesaid decisions, it is difficult to accept the contentions raised by the petitioner that the benefit of doubt ought to have been granted and and the submission that interference by this Court is not called for as the material was found on the ruler which was inscribed subsequently in the spare time and it was not used for the purpose of answering the questions, cannot be accepted.

The contention raised by the learned counsel that the learned Single Judge has committed no error has no merit as the learned Single Judge has appreciated evidence which is not permissible in view of the principles laid down in the case of K.S. GANDHI AND OTHERS (supra). The Apex Court pointed out that "the High Court, in our view, overstepped its supervisory jurisdiction and trenched into the arena of appreciation of evidence to arrive at its conclusions on the specious plea of satisfying "conscience of the Court " .....

At the cost of repetition, we again note here that the student was found with some material inscribed on the ruler pertaining to the paper in which the student was appearing, and, therefore, interference with the findings recorded by the fact-finding authority was uncalled for.

In view of the aforesaid legal position, the decision rendered by the learned Single Judge requires to be quashed and set aside. The appeal stands allowed with no order as to costs.

In view of the above order i.e. allowing the appeal, the Civil Application is not to be entertained

further and hence stands disposed of accordingly.

(D.M. DHARMADHIKARI, CJ.)

csm./ (B.C. PATEL, J.)